

The following pages are the public comments received about the Crystal Springs Forest Conservation Plan submittal #3 (submitted 12/31/14). These comments were received between 12/31/14 and 1/9/15.

Where a duplicate message was received it is so noted.



this email message was received 2 times

Maria Broadbent <mbroadbent@annapolis.gov>

Reject the Crystal Spring Forest Conservation Plan

1 message

james kujawski <jakujawski@gmail.com>

Wed, Dec 31, 2014 at 10:03 AM

To: ForestConservationAct@annapolis.gov, mayor@annapolis.gov, mbroadbent@annapolis.gov, PlanZone@annapolis.gov, mikepantelides@gmail.com

Dear Mayor Pantelides, Ms Broadbent, members of the Planning Commission,

We the citizens of greater Annapolis implore you to reject the new Forest Conservation Plan (FCP) for the Crystal Spring development on the bases of a deficient wetland delineation; wetland impacts that would exceed thresholds under the Maryland General Permit (GP); unacceptable impacts to contiguous forest; and inadequate mitigation measures.

The project as proposed would also cause severe congestion to Forest Drive traffic patterns and contribute to the overcrowding of area schools. It is the wrong project in the wrong place.

We also ask that the Planning Commission reject this FCP because of its several deficiencies and the following issues:

- The Wetland Delineation greatly underestimates the amount of non-tidal wetlands
- As a result, wetland impacts are greatly underestimated, by as much as 1,000%.
- The documents are unclear and highly ambiguous as to drawings and impacts.
- The amount of forest loss (44 acres) is unacceptable under the Forest Conservation Act
- The wildlife corridor and forest mitigation proposed is inadequate to offset impacts to the wildlife habitat and ecological functions provided by the 82-acre contiguous forest block on the property.
- A new, objective wetland delineation by an independent wetland expert is greatly needed.

We urge you, Mayor Pantelides, to stand by your original conviction in working to protect this area. You campaigned vigorously to stop the project, not to make it slightly smaller.

The developers would have you believe that the City has no authority to stop the project, but the facts are clear. The project would not comply with existing environmental law, and as a result it is not in the interest of the public trust of the Citizens of Annapolis and surrounding areas.

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Maria Broadbent <mbroadbent@annapolis.gov>

Crystal Spring

1 message

Gerald Winegrad <gwwabc@comcast.net>

Wed, Dec 31, 2014 at 11:36 AM

To: Maria Broadbent <mbroadbent@annapolis.gov>

Dear Maria,

I hope you had a very peaceful and Merry Christmas and are ready for a most Happy New Year. I also hope have taken time off from the hectic grind of improving the environment of our great City. Unfortunately, I am still grinding, too, along with other area leaders on the Crystal Spring issue.

Together with our land use attorney and the input of others, I have worked up a Memo for your use regarding the questions raised about moving all development north of the intermittent stream and how the meadow can legally be protected and used for afforestation or reforestation under the Forest Conservation Act. The Mayor has insisted that all development be kept north of the stream and as you read the attached memo, you can see that you are on very sound footing in doing this. DNEP has more than ample authority to require that all building be moved north of the intermittent stream and to substantially reduce the footprint of the development. DNEP has much discretion and authority when acting to protect priority forest under the FCA and the City could—and should—not only prevent development south of the stream but also substantially restrict all development north of the stream. DNEP could reject construction of the 116 non-age restricted town houses and most of the commercial development to protect priority forest and comply with the Comprehensive Plan.

DNEP also has ample authority to require that all priority forest cleared at the northern end be replaced on site and this logically would be through reforestation and afforestation of the non-forested acreage below the stream. Under the Forest Conservation Act, the City and the developer are obligated to retain and protect these priority forest under any forest conservation plan. Under this law, such priority forest are considered priority for retention and protection, and they shall be left in an undisturbed condition. This language could not be clearer and gives the City a significant amount of discretion to determine whether the only exception to this statutory dictate is met: priority forest may only be cleared “if the applicant has demonstrated, to the satisfaction of the City, that reasonable efforts have been made to protect them and the plan cannot reasonably be altered.”

Of course not all reasonable efforts have been made to protect the forest nor has the developer come close to demonstrating that the plan cannot reasonably be altered. How can this burden be met when the developer still insists on a development plan to construct an enormous project that would destroy 44.24 acres of priority, mature, contiguous forest noted by the developers’ preliminary FCP: “76 acres of the 82 acres of Priority Forest on site is a mature, mixed hardwood forest with numerous large trees estimated to be between 80 to 100 years old scattered throughout the site.” These 44.24 acres of priority forest would be replaced by 500 housing units (houses and apartments), a shopping center with a 54,000 sq. ft. food store and many retail stores, restaurants, a West Marine store, office space, a new 80-room hotel, a chapel, two health centers for residents of the complex, a cultural arts center, new roads, and 1,729 parking places to support all this development. This would add 1,000 new residents living mostly in a priority forest that is supposed to be left undisturbed and protected.

The latest sketch plan submitted by the developers at an October meeting with the Mayor and key staff including you shows the developers’ arrogance and open defiance to the comments and directives of the Mayor and staff. In failing to re-locate all development north of the stream, the developers actually INCREASED their development south of the stream by shifting nine of the single family units with two-car garages from the middle to the southern end AND throwing in six more such units on top of the 24 that were at the southern end on the plan filed with the City on June 25, increasing the total number from 33 to 39 of these independent living cottages. This means more priority forest will be cleared and most open space suitable for re-planting lost with the construction of the 39 independent living housing units, the proposed two 20-unit apartment buildings, and the health center plus the road to reach them through the forest and over the stream and near

wetlands, and the parking areas to accommodate the 79 housing units and the health center.

This is contrary to the dictates of the Forest Conservation Act and the regulations, model ordinance, and technical manual developed under it, all of which provide clear direction and authority for DNEP to keep the southern portion of the property as contiguous forest to be used for reforestation and afforestation.

Under the way the FCA works, there is a strong preference and dictate to protect existing forest, especially priority forest. Where they cannot be completely protected, there is a strong preference for reforestation and afforestation on-site and for establishing and protecting contiguous forest and protecting wetlands, water quality and wildlife habitat as well as steep slopes and erodible soils. Most all of these parameters come into play in requiring the development to be moved north of the stream and the southern portion to be protected and areas used there for reforestation and afforestation. Further, because the developers want to clear specimen trees and have filed a request with DNEP for a variance to do so, the open land at the southern end becomes even more important as a site to replant some larger trees to make up for any such loss, and this on a higher ratio than one-for-one.

Of course, the isolation of these 79 units and the health center at the farthest southern portion of the site and away from the amenities to the north is the anti-theses of Smart Growth. It violates all basic principles of urban planning.

Another item addressed in the attached memo also is important: A prestigious group of historians filed a report with you and Lisa Craig and other City officials and subsequently met with Sally Nash, Lisa Craig, Tom Smith and others from P & Z. This report documented the potential importance of Crystal Spring as the site of or being very close to the site of Camp Parole 2, an important Civil War site that housed from 3,000 to 20,000 Union soldiers from September 1862 to July 1863. They believe that Crystal Spring contains significant Civil War artifacts and is perhaps the last undisturbed ground associated with Camp Parole 2. They called for any approval of development at Crystal Spring to recognize the importance of this site and that there be an archeological investigation of Crystal Spring before any land disturbance begins to determine what physical evidence there is to help chronicle this story and to analyze this evidence for historical significance before the chance is lost. Lisa Craig and the the other P & Z officials advised them that a Phase I archaeological study will be required of the developer. This evaluation will entail research, archaeological work, digging at the site, and analyses before a site plan is approved. If the Phase I preliminary assessment warrants, there could be more detailed Phase II and III evaluations, and any FCP or site plan may have to be altered to protect the historical integrity of the site.

The problem with this is that such a Phase I study and evaluation is under Planning and Zoning during site plan review and such a study has not been required by DNEP for the Forest Conservation Plan. Under the the State Forest Conservation Technical Manual 1997 Edition, which the City has adopted by reference, priority status and protection is dictated for trees associated with a historic site or structure. See page 3-5. <http://www.dnr.state.md.us/irc/docs/00010950.pdf>. Any trees associated with a historic site or structure are to be noted in the FCP and the applicant must demonstrate that all techniques for retention have been exhausted and why these trees cannot be left undisturbed. The applicant must also demonstrate where on the site and how afforestation or reforestation for any tree removal will be accomplished in such a priority area. I realize that DNEP received this historical report three days before the completion of its FCP review, but I suggest that DNEP should not approve a FCP without the required information on the presence of trees associated with this potentially significant historic site and perhaps the footings or foundations of historical structures from Camp Parole 2. Any FCP should contain information as a result of a thorough Phase I archaeological survey in consort with these top local historians and their findings.

Finally, any DNEP decision on approval of the FCA should not be influenced in any way because of legal threats and specious arguments about a constitutional taking. The developers have begun to take a much more aggressive posture as this massive and devastating proposal stalls but they continually fail to address concerns and directives sent them by DNEP and P & Z and even defy these formal comments by increasing the development south of the stream and ignoring other shortcomings DNEP and P & Z have raised.

The principals of the master developer, Marshall Breines and Jim Eagan, published a guest column in *The Capital* on August 22, 2014 two weeks after the City's FCP comments were filed in which they attacked both the City and its advisory Annapolis Environmental Commission for the way the City governs the development process. They noted that "The entrenched environmental no-growth agenda lead by the Annapolis Environmental Commission has infected the process....other comments and requests relating to matters that should be reviewed at later stages of the approval process are well beyond the scope of Forest Conservation Plan review. Crystal Spring will review these premature and exceedingly costly requests with the City of Annapolis to determine which issues may be deferred until later stages in the approval

process, in a manner consistent with the way the city applies the Forest Conservation Act to other development projects. Could it be that the goalposts have been moved (once again) in an attempt to stall the Crystal Spring project and prevent review by the Planning Commission?"

Thousands of citizen opponents previously were subject to such verbal and written insults; now they are being directed at DNEP, P & Z, and the City and its AEC.

We all hope you will fully use the authority vested in you under the Forest Conservation Act to make sure that all development is moved north of the stream, that the meadow in the south is used for afforestation/reforestation to mitigate for priority forest and trees of significance that are taken down at the north end, and that the project at the north end adheres strictly to the FCA and is substantially reduced in scope.

Thanks.

Gerald



Memo on All Development North of Stream December 22, 2014 FINAL.docx

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DNEP HAS THE LEGAL AUTHORITY TO REQUIRE THAT ALL BUILDING AT CRYSTAL SPRING BE MOVED NORTH OF THE INTERMITTENT STREAM

The issue has been raised of DNEP's authority to substantially reduce the footprint of the Crystal Spring development and require that all building be moved north of the intermittent stream. This is what the Mayor repeatedly has advised the developers to do. We believe that the City has both the authority and the duty to require that all development be moved north of the intermittent stream and all non-forested acreage below the stream should be reforested.

What is the legal basis for requiring this as part of the Forest Conservation Plan?

1. NATURAL RESOURCES ARTICLE, SECTION 5-1607 ADOPTED BY THE CITY REQUIRES THE PRESERVATION AND PROTECTION OF PRIORITY FOREST AND AFFORESTATION OR REFORESTATION ON SITE.

At the hub of the forest conservation issue at Crystal Spring is the fact that the developer desires to clear 44.24 acres of the 82.24 acres of priority forest at the 111-acre Crystal Spring site as well as clear trees of significance. These forests and trees are given the highest priority for preservation and protection under the Forest Conservation Act and the City has a statutory duty to protect the priority forests and trees under Natural Resources Article, Section 5-1607 of the Forest Conservation Act, which the City has adopted by Ordinance.

Section 5-1607 imposes a series of mandates upon the development process, which the City and any developer must honor, including:

(a) The **preferred sequence for afforestation and reforestation** shall be established by the State or local authority in accordance with the following techniques for retaining existing forest cover on-site have been exhausted:

(1) Those techniques that enhance existing forest and involve selective clearing or supplemental planting on-site;

(2) On-site afforestation or reforestation may be utilized where the retention options have been exhausted. In those cases, the method shall be selected in accordance with subsection (b) of this section, and the location shall be selected in accordance with subsection (d) of this section;

(3) (i) Off-site afforestation or reforestation in the same watershed or in accordance with an approved master plan may be utilized **where the applicant has demonstrated that no reasonable on-site alternative exists**, or where:

1. Any on-site priority areas for afforestation or reforestation have been planted in accordance with subsection (d) of this section; and

2. The applicant has justified to the satisfaction of the State or local jurisdiction that environmental benefits associated with off-site afforestation or reforestation would exceed those derived from on-site planting;

The above referenced statutory dictate for afforestation or reforestation on site must be read in consort with the other statutory mandates of Section 5-1607, including the following for **priority forest**:

(c)(1) The following trees, shrubs, plants, and specific areas **shall be considered priority for retention and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the State or local authority, that reasonable efforts have been made to protect them and**

the plan cannot reasonably be altered . . . 2. Contiguous forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site.”

In addition, DNEP must adhere to similar requirements under the Forest Conservation Act for **trees of significance** that also require the granting of a variance, Natural Resources Article, Section 5-1607:

(c)(2) The following trees, shrubs, plants, and specific areas shall be considered priority for retention and protection, and they shall be left in an undisturbed condition unless the applicant has demonstrated to the City of Annapolis, Department of Neighborhood and Environmental Programs, that the applicant qualifies for a variance under MD Natural Resources Code Ann. Sec. 5-1611:...

3. Trees having a diameter measured at 4.5 feet above the ground of (1) 24 inches.

All of these provisions were adopted by the City directly from the State Forest Conservation Act requirements.

As the City has designated the 82.24 acres of forest at Crystal Spring as priority forest for retention because they are contiguous forest, as provided by state and City law, they shall be “considered priority for retention and protection, **and they shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the City that reasonable efforts have been made to protect them and the plan cannot reasonably be altered.**”

In addition, all trees of more than 24”, specimen trees are given such priority for retention and protection and are given an added measure of protection requiring the granting of a variance before they are cleared.

The developer concedes that all 82 acres of forest are priority forests and that most all of the forests are mature, older forests. The preliminary FCP states that “76 acres of the 82 acres of Priority Forest on site is a mature, mixed hardwood forest with numerous large trees estimated to be between 80 to 100 years old scattered throughout the site.” Such large, contiguous, mature forests are rare in Annapolis and have extremely high ecological value for water quality, air quality, wildlife habitat, and the protection of groundwater, wetlands, steep slopes, and erodible soils.

The directive that such forests and are a priority for retention and protection as are the specimen trees “and shall be left in an undisturbed condition” gives the City a substantial amount of discretion to limit the development, including strict requirements for greatly limiting clearance of such forest and for on-site reforestation and afforestation in lieu of such protections.

Such protections and reforestation and afforestation requirements apply to the far southern end of the property where the developers latest sketch plans discussed with the City in October would develop 39 independent housing units of single family, two-car garage homes and duplexes with two housing units. The developers have increased the number of these units from 33 to 39 since the formal filing of its PFCP. In addition, the developer would place two-20 unit apartment complexes and a health center at the southern end.

DNEP has the clear statutory authority and duty to require reforestation and afforestation on-site after all techniques for retaining existing forest cover on-site have been exhausted. Supporting this approach are the City’s comments of August 8, 2014 on the PFCP. The City cites “Natural Resources Article §5-1607(d) requiring “establishing or increasing forested corridors to connect existing forests within or adjacent to the site a priority for afforestation or reforestation. Furthermore, §5-1607(d) states that forested corridors, where practical, should be a minimum of 300 feet in width to facilitate wildlife movement.”

The southern end of the property, especially the meadow and other unforested areas, as well as areas of some forest with invasive species, is a logical and reasonable area for reforestation and afforestation to accomplish the goals of the Forest Conservation Act. The necessity for this reforestation and afforestation on site at the southern end of the property is paramount to compensate for the clearance of priority contiguous forest and specimen trees. Such use of this land also would increase the important contiguity of the forest and provide a

better wildlife corridor, better habitat for forest interior breeding birds, better water quality benefits as it is closest to the Critical Area, better stormwater controls, and better protection for steeper slopes and for erodible soils. Eliminating the necessity of the road running to and through the development on the southern end adds to the urgency of leaving the southern end undisturbed and to be used for afforestation or reforestation.

Note these comments on the PFCP of August 8, 2014 from Planning and Zoning in support of moving all development north of the stream:

“Page 8 of the FCJ continues to list major plan modifications and notes that the small independent cottages, with no basements, will be developed to insure that the existing hydrology continues to sheet flow to the intermittent stream. However, approximately 2.7 acres of mass forest clearing, proposing an elevated grade change of 4 to 10 ft. with 750 lineal feet of retaining wall, is sure to significantly alter the existing hydrology. In addition, this location proposes impacts within nontidal wetland buffers 'D' and 'E'. To reiterate, **it is recommended that Crystal Spring Farm Road retain its existing grade and that the 9 cottage units, with a cross road from the west, be relocated from the middle section entirely.**” These comments support DNEP’s direction to move these nine units.

P & Z further directs the developers to move all of the other 24 cottages, two 20-unit apartment buildings, and health center from the far southern end. See P & Z Comments at pages 5 and 6, Item 18, 4th item:

“Number 5 states that forest clearing in the rear portion of the site is limited to immature forest with invasive species. Again, not completely accurate as priority forest is impacted and drainage outfalls are proposed on steep slopes. The entire area may be best served with an invasive removal program, reforestation and relocation of the CCRC units. While the southern portion of the site contains the largest non-forested area, it also serves as two of the three natural drainage outfalls, adjacent to Resource Conservation critical area. **The southern area should be protected from development and used as justification, through reforestation, to support development in the northern site area,**”

The development at the southern end of the property would impact priority forest and adversely impact drainage patterns and adversely affect water quality and wildlife habitat.

For the City to approve the FCP and grant a variance for clearing specimen trees, it must find that reasonable efforts have been made to protect them and the plan cannot reasonably be altered. Such a finding would be ludicrous under the current proposal as there can be no question that there are more reasonable efforts that can be made to conserve this priority forest and the plan obviously can be reasonably altered. One of the ways of accomplishing both more forest conservation and reasonably altering the massive development proposed at the site is by moving all building from south of the intermittent stream to the northern end and eliminating all or most all of the non-age restricted development at the heavily wooded north end of the property.

DNEP is under no obligation to approve a development for this ecologically sensitive site that, as proposed by the developer, would include bulldozing 44.24 acres of mature priority forest and replacing it with more than 500 houses and apartments, a shopping center with another traffic-generating 54,000 sq. ft. food store, many other retail stores, restaurants, a West Marine store, and office space and more: a new 80-room hotel, a chapel, a new cultural arts center, two health centers for residents of the complex, new roads, and 1,729 parking places to support all this development.

The City should be aware of the shifting pledges for forest conservation by the developer:

The developer’s January 8, 2013 draft site plan that was posted on DNEP's web site was used to indicate that “only” 36 acres of forest would be cleared. Both Mr. Marshall Breines and Mr. James Eagan and their PR consultant Mr. Andrew Bing have indicated that forest clearing on the 111 acre site will be kept to 36 of the 82

acres of forest. They so informed Gerald Winegrad of this at a meeting in Annapolis on January 8, 2013 when they gave him a copy of the site plan that was posted on the City's web site shortly thereafter.

We also have a letter from the owner, Ms. Richardson, sent to us on March 5, 2013, in which she notes that under the January 2013 plan, more than 50 percent of the forested acres on the 111 acre property would be retained. This is cited in making her case for how environmentally responsible the development is.

David Prosten has a copy of an email from Andrew Bing to David dated January 17, 2013 in which Mr. Bing clearly states that "our goal is to retain 44 forested acres."

The developer's web site notes under "**A Commitment to Sound Environmental Practices.**" That:
The proposed development plan will retain more than 50 percent of the 80 forested acres on the site."
See <http://www.crystalspringannapolis.com/about/crystal-spring-fact-sheet> Accessed June 30, 2014.

The developer's most recent submittal would clear 44.24 acres of the 82 acres of designated priority forest and develop the only suitable area on the site for substantial afforestation and reforestation at the southern end, taking down even more forest in building in that area.

The construction of a large development of 79 housing units and a health center at the southern end would require a road running from the development north of the stream to the isolated development at the southern end along with new roadways around the complex and parking spaces. The construction of the road over the intermittent stream and through the heart of the property could be eliminated if all development was moved north of the stream, fulfilling the statutory mandate to retain and protect these priority forests and to leave them in an undisturbed condition. The road will also fragment the forest which is to be avoided under the Forest Conservation Act and the regulations and Forest Conservation Technical Manual implementing the law.

Assuming that the developer of Crystal Spring were to satisfy the strict mandates of Section 5-1607(c)(1) that some existing forested areas on the site must be disturbed (which we do not believe the developer has demonstrated in its latest plans), this in no way would relieve him of the other mandates of the section. In a site as large as Crystal Spring, there is ample opportunity to compensate for any amount of forest disturbance with on-site afforestation and reforestation, e.g. in the area south of the intermittent stream. Per Section 5-1607(a) the developer is under a mandate to "exhaust" that possibility in his planning efforts. If a balance can be struck wherein the amount of forest disturbance can be compensated wholly or mostly with on-site afforestation and reforestation, then that balance must be struck in the developer's plan.

The developer enjoys no right to any particular amount of development on this site based upon the pre-existing zoning. Moreover, as discussed below in item number 5, the City's Comprehensive Plan contemplates an amount of development for this site that would be far less than the developer has proposed. Assuming for sake of argument only that the amount of priority forest to be disturbed should accommodate anything close to the amount of development proposed by this developer, the plan and supporting materials must demonstrate the efforts to satisfy all of the mandates of Section 5-1607, including that the 82 acres of priority forest **shall be considered priority for retention and protection and shall be left in an undisturbed condition.**

Absent this demonstration, the plan cannot be approved. And, if the developer should offer such demonstration in the future, the City is under no obligation to approve any particular amount of development as long as the City does not deny the landowner all economically beneficial or productive use of her land. The case law is clear that protecting all lands below the intermittent stream is permissible. Indeed, the City's only obligation is to assure that the mandates of Section 5-1607 and other laws and regulations have been satisfied while allowing

some economically beneficial or productive use of the land. Even a substantial diminution in value of the property due to a strict application of the Forest Conservation Act is permissible in fulfilling the law. See further discussions of these points below in item number 8.

2. STATE AND CITY LAW DIRECT THE PROTECTION AND REFORESTATION AND AFFORESTATION OF AREAS SUCH AS THE SOUTHERN END OF CRYSTAL SPRING.

The State Forest Conservation Act, Natural Resources Article, Section 5-1601 et seq., and the regulations, model ordinance, and technical manual developed under it, provide clear direction and authority for the City's authority, and even duty, to keep the southern portion of the property as contiguous forest and used for reforestation and afforestation. There is a strong preference and dictate to protect existing forest, especially priority forest such as at Crystal Spring. Where it cannot be completely protected, then there is a strong preference for reforestation and afforestation on-site and for establishing and protecting contiguous forest and protecting wetlands, water quality and wildlife habitat as well as steep slopes and erodible soils. Most all of these parameters come into play in requiring the development to be moved north of the stream and the southern portion to be protected and areas used there for reforestation and afforestation. The provisions cited above and these provisions all provide the City ample authority to accomplish this:

Maryland DNR's interpretation of the dictates of the FCA state "The main purpose of the Maryland Forest Conservation Act (Natural Resources Article Section 5-1601 through 5-1613) enacted in 1991 was to minimize the loss of Maryland's forest resources during land development by making the identification and protection of forests and other sensitive areas an integral part of the site planning process. Identification of priority areas prior to development makes their retention possible. Of primary interest are areas adjacent to streams or wetlands, those on steep or erodible soils or those within or adjacent to large contiguous blocks of forest or wildlife corridors. See <http://www.dnr.state.md.us/forests/programapps/newFCA.asp>.

In addition to the statutory language cited above dictating priorities for on-site reforestation and afforestation, the State Forest Conservation Technical Manual 1997 Edition, which the City has adopted by reference, lends full support to requiring all development to be moved north of the stream. As an example, at:

P. 1-1, "the Act requires establishment of areas where new forests can be replanted."

P. 1-7. Cluster where possible.

P. 2-10 Priority retention areas include forests or other vegetation on steep slopes.

P. 3-6 et seq. Provides where and how reforestation or afforestation will occur for priority forest cleared and gives clear directions for establishing forest on-site as a priority.

In the DNR Model Forest Conservation Ordinance at Article VI, Forest Conservation Plan, 6.1 General Provisions, this language gives further direction:

A. In developing a forest conservation plan, the applicant shall give priority to techniques for retaining existing forest on the site.

B. If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant shall demonstrate to the satisfaction of the Department:

(1) How techniques for forest retention have been exhausted;

(2) Why the priority forests and priority areas specified in Natural Resources Article, §5-1604(c)(1), Annotated Code of Maryland, cannot be left in an undisturbed condition:

(a) If priority forests and priority areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with Natural Resources Article, §5-1607, Annotated Code of Maryland;

(b) Where on the site in priority areas afforestation or reforestation will occur in compliance with Natural Resources Article, §5-1607, Annotated Code of Maryland; and

(3) How the disturbance to the priority forests and priority areas specified in Natural Resources Article, §5-1607(c)(2), Annotated Code of Maryland, qualifies for a variance.

The 79 housing units at the southern end and the infrastructure to support them including roads, streets, parking and stormwater management facilities would remove more priority forest and much of the acreage left for reforestation and afforestation.

Again, the City has ample authority to prevent the clearing of priority forest and to require clustering of all development at the northern end of the property, and to require reforestation and afforestation of the southern end of the property.

3. DESTRUCTION OF SPECIMEN TREES PROHIBITED WITHOUT STRONG EVIDENCE OF UNWARRANTED HARDSHIP.

The developers plan to clear specimen trees and have filed a request with DNEP for a variance from the provisions of the Forest Conservation Act to do so. The comments sent back by the City in August indicate that more than 17 such trees will be affected. These specimen trees with a DBH of 30" or more are given special protection under State and City law:

Natural Resources Article. Sec. 5-1611, B. The following trees, shrubs, plants, and specific areas shall be considered priority for retention and protection, and they shall be left in an undisturbed condition unless the applicant has demonstrated to state or local authority that the applicant qualifies for a variance.

The applicant must demonstrate that they would suffer an "unwarranted hardship" and they have exhausted all alternatives to protect these specimen trees. State law requires the City to adopt a variance procedure for such cases but the City has not done so.

Further, under the State Forest Conservation Act, § 5-1611 on Variances: (b) Variance procedures adopted under this section shall:

- (1) Be designed in a manner consistent with the spirit and intent of this subtitle; and
- (2) Assure that the granting of a variance will not adversely affect water quality.

Under case law, which is quoted by then Acting City Attorney Elson an applicant has the burden of proving that without a variance the applicant would be denied reasonable and significant use of the entire parcel or lot. The applicant must also prove that the need must be substantial and urgent and not merely for the convenience of the applicant.

In allowing the developer to clear such protected trees, the City could justify such a variance on the condition that afforestation with trees of similar species and larger trees of at least 6" DBH be replanted at the far southern end in the meadow. And, the ratio could be 10 to 1. We would note that the developer's stated reasons for the City granting the variance do not come close to justifying such a variance and are completely for the convenience of the developer and to assure they can gain their maximum density and profitability.

In the Annapolis Environmental Commission comments submitted to DNEP June 17, 2013, the AEC stated: "The developer's environmental consultant provides its justification for removal of the specimen trees in a letter dated May 28, 2013 and addressed to Maria Broadbent at DNEP: "In a fashion similar to its justification for clearing priority forest, the developer appears to focus on an economic basis for its variance request.

Specifically, avoidance of all 27 specimen trees would result in an unwarranted hardship “through a significant loss of units and developable area.” M. Klebasko Letter to M. Broadbent at 2 (May 28, 2013). As stated above, a mere reduction in the profitability of the property does not on its own result in an unwarranted hardship.”

Once again, the city could require the movement of all development to north of the stream in order to provide a variance for specimen tree clearance and their replanting at the southern end.

4. THE FCA DICTATES THAT AN ARCHEOLOGICAL/HISTORICAL ASSESSMENT MUST BE COMPLETED BEFORE A FCP CAN BE APPROVED.

A prestigious group of Annapolis historians completed a report on August 5, 2014 documenting the potential importance of Crystal Spring as the site of or being very close to the site of Camp Parole 2, an important Civil War site that housed from 3,000 to 20,000 Union soldiers from September 1862 to July 1863. They believe that Crystal Spring contains significant Civil War artifacts and is perhaps the last undisturbed ground associated with Camp Parole 2. They called for any approval of development at Crystal Spring to recognize the importance of this site and that there be an archeological investigation of Crystal Spring before any land disturbance begins to determine what physical evidence there is to help chronicle this story and to analyze this evidence for historical significance before the chance is lost.

This report of the Camp Parole 2 Subcommittee of the Annapolis History Consortium was sent to City officials on August 5 and included the City Directors of DNEP, P & Z, and Lisa Craig, the Chief of Historic Preservation. This report was filed before the City’s comments on the PFCP were filed on August 8.

On August 22, Rock Toews, one of the History Consortium members met with these City officials to discuss the report and the significance of their findings. The City officials present agreed that a Phase I archaeological study would be required of the developer. This evaluation will entail research, archaeological work, digging at the site, and analyses before a site plan is approved. If the Phase I preliminary assessment warrants, there could be more detailed Phase II and III evaluations, and the site plan may have to be altered to protect the historical integrity of the site.

The problem with this is that such a Phase I study and evaluation is ordered and done under the auspices of the Planning and Zoning Department during site plan review. Such a study has not been required by DNEP for the Forest Conservation Plan.

However, under the State Forest Conservation Technical Manual 1997 Edition, which the City has adopted by reference, priority status and protection is dictated for trees associated with an historic site or structure. See page 3-5 of the Manual found at <http://www.dnr.state.md.us/irc/docs/00010950.pdf>.

Any trees associated with an historic site or structure are to be noted in the FCP and the applicant must demonstrate that all techniques for retention have been exhausted and why these trees cannot be left undisturbed. The applicant must also demonstrate where on the site and how afforestation or reforestation for any tree removal will be accomplished in such a priority area.

While the City only received this historical report three days before the completion of its FCP review and comments, the City and DNEP must now require such a Phase I assessment to determine where on the site there may be any trees associated with an historic site or structure. DNEP cannot approve a FCP without the required information on the presence of a potentially significant historic site and perhaps the footings or foundations of historical structures from Camp Parole 2.

Given the documentation submitted by the Camp Parole 2 Subcommittee of the Annapolis History Consortium, a submittal by the developers of a FCP and any City approval would be incomplete and must contain information on any trees associated with an historic site or structure. These trees are to be noted and protected in the FCP as priority trees, the same as trees of significance with a DBH greater than 24” or 30”. The thorough

archaeological assessment and survey should be conducted in consort with these top local historians and their findings.

5. CITY COMPREHENSIVE PLAN LIMITS DEVELOPMENT TO 140 HOUSING UNITS AND 167,000 SQ. FT. OF COMMERCIAL SPACE.

The City's Comprehensive Plan, adopted in 2009 after two years of efforts and public input, calls for the maximum residential units to be built on the Crystal Spring property to be 140 units and for commercial space to be limited to 167,000 sq. ft. Maryland law requires that local actions be "consistent with a comprehensive plan", and the law states the intent of the General Assembly "that comprehensive plans should be followed as closely as possible while not being elevated to the status of an ordinance and that deviations from the plan should be rare." See MD Land Use Code § 1-303 et seq.

At a City Council Environmental Matters Committee meeting of June 19, 2014, the Acting City Attorney Gary Elson and Acting Planning and Zoning Director Sally Nash both concluded in testimony that City land use decisions involving planned developments and special exceptions must be consistent with the Comprehensive Plan under state law. Mr. Elson concluded in answering Alderman Littmann's inquiry of "Does the 2009 Annapolis Comprehensive Plan have the force of law?" that "So while the plan is not a law in essence, there is a force of law behind it."

City Code actually requires certain elements of development decisions to conform to the Comprehensive Plan. See Chapter 20.24 – DESIGN STANDARDS, Section 20.24.010 – Street design considerations generally.

The developers would have the City fluff-off these clear directions of the Comprehensive Plan for this site because of arguments over what a housing unit is or is not, but the direction is clear—only 140 housing units and 167,000 sq. ft. of commercial space are to be allowed at Crystal Spring. In addition, for some inexplicable reason, the City fails to count the planned 80-room hotel in the commercial space proposed for the development.

The City's Comprehensive Plan specifically identifies the top one-third of the Katherine property nearest Forest Drive for "Urban Center Low" development. At page 25 of the City's Comprehensive Plan, this language appears: "Urban Center Low areas are similar to Urban Commercial areas in terms of character and building heights, but allow for a mix of land uses that is similar to Urban Center areas. These areas consist of a mix of uses that include retail, office, restaurants, and residences. Typically these areas range from two to four stories in height and include a very balanced mix of residential and commercial land uses."

The huge and sprawling CCRC three-winged building as submitted is six stories high and the submittal calls for the CCRC building to go up eventually to seven stories and 90 feet in height. The City has advised the developers to limit the height to six stories, seemingly a big stretch from the maximum of four stories contemplated in the Comp Plan.

6. THE CITY MUST ADHERE TO SMART GROWTH PRINCIPLES IN COMPLYING WITH THE FOREST CONSERVATION ACT AND NOT ALLOW SUCH DETACHED, ISOLATED DEVELOPMENT AT THE SOUTHERN END OF THE SITE.

The August 8, 2014 submittal by the developer again goes into quite a bit of detail about how the massive, sprawling development is Smart Growth. The opposite is true.

In a letter to former Mayor Cohen previously sent to the Mayor from 27 local leaders, we advised him that the proposed project does not meet the standards or principles of Smart Growth. This is mentioned three times and here is but one quote from that letter: "As Governor Glendening advised you 'adjacency is not Smart Growth'."

Governor Glendening is a signatory to the letter and helped write and edit the letter. He is widely known as the father of Smart Growth and is identified with this concept more than any person in America. He developed and

gained enactment of Maryland's Smart Growth law. He is the President and founder of Smart Growth America's Leadership Institute in Washington, DC and speaks all over the country and world advising policy makers on Smart Growth principles.

In a February 18, 2013 email to two City Aldermen concerned with the project, Governor Glendening wrote: "From my perspective of watching similar proposals advance in MD over the last 40 years and even now as I work on these issues across the Nation, I can state with confidence that as currently advanced this project should not move ahead. It certainly is not smart growth." He also wrote in an email that: "Good people working together could improve this proposal dramatically. Many of the suggestions advanced in the letter signed by 27 concerned citizens would be excellent guides to do so." Governor Glendening also noted that: "For the good of the River [South River], the City and County and the environment overall, let us hope rational minds prevail. This could be a much improved project."

He has repeatedly stated that the isolation and sprawl of the development to the southern end violates all principles of Smart Growth and has worked with us to try and have the City work the changes we advocate. In viewing the sketch plan submitted to the City in October he immediately noted how the isolated development at the southern end was definitely not Smart Growth. The two-term Governor lives in Annapolis on the Annapolis Neck Peninsula not far from Crystal Spring.

This isolation makes the project even worse from a Smart Growth perspective: it isolates at the southern end a second development separated by as far as possible from the other development on the property on Forest Drive. The road that must be built to this separate complex will cause the destruction of even more priority forest and increase stormwater runoff problems.

In addition, the developers decided to add six more cottages/housing units to the 33 formerly planned south of the stream. The 79 housing units would be isolated at the southern end and remove much of the acreage left for reforestation and afforestation. This isolation at the farthest southern portion of the site and away from the amenities to the north is the anti-theses of Smart Growth. It violates all basic principles of urban planning.

The developers' use of Smart Growth to justify the flawed PFCP as well as the variance and City exemption for clearing Priority Forest should be rejected out of hand. Instead, the City under the FCA can allude to principles of Smart Growth and require that all development be moved north of the stream and eliminate much or all of the non-age restricted development at the heavily wooded north end of the property.

As noted in Item 2 above, the State Forest Conservation Technical Manual 1997 Edition, which the City has adopted by reference, lends full support to requiring all development to be moved north of the stream. As an example, at:

- P. 1-1, "the Act requires establishment of areas where new forests can be replanted." and
- P. 1-7. "Cluster where possible."

This latter requirement does not mean cluster around the site but in one place to reduce impacts on forest, especially priority forest and to protect areas where new forests can be replanted.

7. THE COUNTY GREENWAYS PLAN (2012) INCLUDES MOST OF CRYSTAL SPRING AND THE PROTECTION OF THE PRIORITY FOREST SHOULD BE ADHERED TO.

The State Forest Conservation Technical Manual 1997 Edition, which the City has adopted by reference, provides for priority status and protection for any forests designated by a local land use plan or forest conservation plan. See page 2-18.

The County Greenways Plan (2012) developed over a long period of time with input from many officials and the public designates most all of Crystal Spring, including the entire southern portion closest to Crab Creek, in the County Greenway. The designation of the southern portion of Crystal Spring (and most of the rest of the wooded site) as a County Greenway with a priority for conservation bolsters DNEP's duty and authority under

the Forest Conservation Act to prevent the development of the southern end and for decreasing the deforestation at the northern end.

This also lends more urgency and support for DNEP requiring the developers not to build anything below the intermittent stream and requiring the reforestation and afforestation in the open areas and for putting the entire southern half of the site into a permanent conservation easement.

8. ASSERTIONS THAT RESTRICTING DEVELOPMENT TO NORTH OF THE STREAM AND CUTTING BACK ON THE FOOTPRINT IS A CONSTITUTIONAL TAKINGS ARE ABSURD.

As noted in Tom Deming's takings memo, in the Forest Clearing Justification submitted with the developer's June 25, 2014 application for preliminary Forest Conservation Plan approval, at page 18, the developer asserts that preservation of all 82.24 acres of Priority Forest "would create an unwarranted hardship for CSD" and "could be construed as an illegal taking of private property rights." The City correctly pointed out in its August 8, 2014 response that the City never has indicated that all priority forest would necessarily have to be preserved, but that despite scaling back by the applicant from its initial plan, "there are further reasonable efforts that can be made to reduce disturbance of priority forest area." The City pointed out that CSD as yet has not addressed fully the application requirements for Forest Conservation Act plans. The City correctly noted in its August 8 response to CSD that "a taking determination is a matter for the courts, not the City or the Developer, and will not be considered as part of CSD's justification for developing in a priority forest area."

There is nothing in "takings" jurisprudence to suggest that the City should waiver in its insistence upon full and effective application of forest conservation requirements in CSD's plans for the Crystal Spring project. This should include moving all development north of the stream and it is our belief that all non-age restricted development should be eliminated including all the commercial and retail development planned.

The case law is clear that the City has such authority. In *Neifert v. Dep't. of the Environment*, 395 Md. 486, 517 (2006), the Maryland Court of Appeals most recently reiterated the test employed by both it and the Supreme Court for what constitutes a taking: "A property owner who is denied all economically beneficial or productive use of his or her land in the name of the public at large has likely suffered a taking, unless the regulation prohibits a common law nuisance. See, *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992)" [Emphasis added]. Moreover, as the Supreme Court famously stated in *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 131 (1978):

"Taking" jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated. In deciding whether a particular governmental action has affected a taking, this Court focuses rather both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole

In other words, any claim of a taking from full and complete application of Forest Conservation Act requirements to development of Crystal Spring property would have to be premised upon the regulation denying to Crystal Spring Development, LLC all beneficial use of the entire acreage of the site. A claim that they were denied beneficial use of the acres required to be preserved as priority forest would never rise to the level of a taking, because even if all priority forest were preserved, there would be ample acreage left over to develop for economically and productive use.

In addition, any takings claim at this juncture is specious and designed to be intimidating as under the governing case of *Penn Central*, the developer simply has no grounds for raising the specter of "taking" before its

application has been fully submitted and acted upon. As recently and succinctly summarized by Justice Kagan, writing in dissent in *Koontz v. St. Johns River Water Management District*, 570 U.S. ___, ___ (2013):

Claims that government regulations violate the Takings Clause by unduly restricting the use of property are generally “governed by the standards set forth in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104(1978).” *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005). Under *Penn Central*, courts examine a regulation’s “character” and “economic impact,” asking whether the action goes beyond “adjusting the benefits and burdens of economic life to promote the common good” and whether it “interfere[s] with distinct investment-backed expectations.” *Penn Central*, 438 U.S., at 124. That multi-factor test balances the government’s manifest need to pass laws and regulations “adversely affect[ing] . . . economic values,” *ibid.*, with our longstanding recognition that some regulation “goes too far,” *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922).

Proof of even substantial diminution in value alone does not establish a taking without the claimant also providing proof relative to the competing interests described in *Penn Central*. Moreover, before he may assert that regulation constitutes a taking, a land owner must go through the regulatory process to its conclusion: “It follows from the nature of a regulatory takings claim that an essential prerequisite to its assertion is a final and authoritative determination of the type and intensity of development legally permitted on the subject property. A court cannot determine whether a regulation has gone ‘too far’ unless it knows how far the regulation goes.” *MacDonald, Sommer & Fraites v. Yolo County*, 477 U.S. 340, 348 (1986).

As long as the City does not deny the landowner all economically beneficial or productive use of her land and acts to protect public health, safety, and welfare, there should be no takings under the Constitution. We would assert that the City fully applying the provisions of the Forest Conservation Act to protect forest, wetlands, water quality, air quality, wildlife habitat, steep slopes, and erodible soils, while allowing some reasonable and economically beneficial and productive use of the land at Crystal Spring, will unquestionably withstand any constitutional or statutory challenge.



Maria Broadbent <mbroadbent@annapolis.gov>

Public Comment on Forest Conservation Plan for Crystal Spring1 message

Gerald Winegrad <gwwabc@comcast.net>

Fri, Jan 9, 2015 at 11:51 AM

To: Maria Broadbent <MBroadbent@annapolis.gov>

Cc: michael pantelides <mikepantelides@gmail.com>, mayor@annapolis.gov, mpantelides@annapolis.gov, Thomas Andrews <tcandrews@annapolis.gov>, Michael Leahy <mgleahy@annapolis.gov>, GMElson@annapolis.gov

Dear Ms. Broadbent,

The most recent Crystal Spring Preliminary Forest Conservation Plan (PFCP) was filed by the attorney for the developers on December 31, 2014. The voluminous filings were not posted to the City's web site and hence not available to the public until the afternoon of January 5. The City did not announce the procedures for public comment until sometime after the posting of the filing and we did not learn until January 7 of the comment procedures and deadline of January 30 to submit comments. We realize that unless you extend the time for cause, the City must accept, reject, or send back with comments the PFCP within 45 days of its filing.

As you would expect from the review process on earlier versions of the FCP for Crystal Spring, you will receive some detailed comments from concerned individuals and groups. Our comments submitted on July 31, 2014 submitted on behalf of 30 citizen leaders on the last iteration of the FCP ran 17 pages; those of the Annapolis Environmental Commission were 11 pages in length.

The most recent FCP made available to the public on January 5 is extensive and contains 18 separate exhibits and six other filings including a 61 page filing entitled "Crystal Spring—Point by Point Response" and a separate forest clearing justification document that is 22 pages long. All of these documents are critical to a thorough and meaningful review both for DNEP, P & Z, and other City agencies, and by the public to help inform the decision-making process.

Therefore, it is essential to fulfilling the directives of the Forest Conservation Act and the City's administration of the FCA that all such public input be afforded the time for a meaningful review and role in the decision-making process by the City of this important document involving the destruction of 43.46 acres of priority forest and the potential degradation of the environment with such destruction and replacement of forest with a significant amount of impervious surface.

Members of the public will try and do their part in this process, despite the time constraints, by reviewing the voluminous filings and addressing comments to the specific statutory and regulatory requirements for forest conservation plans. For the City's part, particularly you as Director of DNEP, all such comments should be reviewed and considered by you and your staff and the staff of other City agencies, before any staff recommendations and decisions based on them are made on the PFCP. If staff review and recommendations based on that review are made before public comment due by January 30, what role does such public input play, if any? I am not suggesting that you and City staffers not begin the detailed

review of the filings until January 30, rather that any staff recommendations on the filings and any decision making by DNEP, P & Z, or other City agencies be held in abeyance until the public comment period ends and there is adequate time to give the public's comments equal review and input into the decision-making process as that of the applicant's filings.

Following the January 30 deadline for public submissions, about two weeks will remain in the statutory period of 45 days for review. Time constraints must not trump the requirement for thorough evaluation of all public comments before decision making proceeds. If necessary to complete such evaluations and factor them into your decision and those of other City agencies, you are authorized by Natural Resources Article, Section 5-1605(d) to extend the review period for up to 15 days. We urge you to use this authority to assure adequate time for the staff's thorough review and consideration of the public input prior to your decision about this plan.

Thank you for considering this matter.

Respectfully,

Gerald W. Winegrad



Unknown ForestConservationAct <forestconservationact@annapolis.gov>

Comment on Crystal Spring Plan

1 message

Laura Bertran <lbertran@msn.com>

Fri, Jan 9, 2015 at 1:29 PM

To: "ForestConservationAct@annapolis.gov" <ForestConservationAct@annapolis.gov>

I am writing to strongly oppose the most recent development plan for the Crystal Spring property. The current plans make none of the necessary adjustments required by law and continue to threaten the water quality and health of South River, the forested land in question, and the quality of life of all of us who live and work in this region. The construction of more than 500 homes and apartments, adding 1,000 more residents plus a shopping center, hotel, restaurants and health center right at the busy intersection of Forest Drive and Spa Road is in violation of the city's Comprehensive Plan and is strongly opposed by our community. The plan under consideration would strip more than 40 acres of mature forest and replace it with impervious surfaces, including more than 9 acres for parking (1,700 spaces) and close to 12 acres for roads and sidewalks.

I urge the City of Annapolis to hear the voice of its citizens and insist that the Crystal Spring developers adhere to the city's Comprehensive Plan, directing no more than 140 housing units at the site. Like all of us, the developers must follow the law. The law requires protection of priority forest and water quality. The law can be met only if the development is scaled back significantly and all development is moved north of the stream, as directed by the mayor and city planners.

To quote a neighbor, "we do not need more food stores like the huge new one proposed for the site. We have eight full-service grocery stores nearby, including an underutilized Safeway very close to Crystal Spring. Annapolis has empty storefronts. We do not need the congestion that would be added to our schools and roads. Besides preserving the forest, we will be preserving our quality of life."

Thank you.

Laura Bertran

604 Tayman Drive

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